



POLICE DEPARTMENT

March 08, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jonathan Joyner
Tax Registry No. 935084
Police Service Area 9
Disciplinary Case No. 2011 6180

The above-named member of the Department appeared before the Court on January 9, 2013, charged with the following:

1. Said Police Officer Jonathan Joyner, while off-duty and assigned to the 75th Precinct, on or about November 2, 2011, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer was involved in a physical altercation with Person A, the [REDACTED] of said Police Officer's [REDACTED]

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Jonathan Joyner, while off-duty and assigned to the 75th Precinct, on or about November 2, 2011, having been involved in an un[u]sual police occurrence did fail and neglect to remain at the scene and request the response of a patrol supervisor.

P.G. 212-32, Page 1, Paragraphs 1 and 2, Note OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF
THE SERVICE
COMMAND OPERATIONS

The Department was represented by Louis Bara, Esq., Department Advocate's Office.
Respondent was represented by Craig Hayes, Esq., Worth Longworth & London, LLP.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Shatisha Clancy as a witness.

Police Officer Shatisha Clancy

Clancy was the 60 Precinct domestic violence officer. On November 7, 2011, Clancy testified, a woman named Person A came to the precinct station house to file a complaint against Respondent, her [REDACTED]. Person A stated that on November 2, 2011, she and Respondent were arguing over a telephone call. Respondent did not want Person A to speak on the phone. He slapped her with the back of his hand in the face and stomach. This argument took place inside a vehicle.

Clancy observed swelling and a small laceration on Person A's lower lip, and redness and bruising to her stomach. Person A seemed nervous and afraid. She "couldn't stay still pretty much" and "seemed to be in the moment," as though she was recalling the attack. Clancy "could sense the fear on her."

Clancy testified that Person A received a few phone calls from Respondent during the interview. When she did not answer, he sent her a text message. Person A still did not answer.

She told Clancy that Respondent was trying to find her by using the Find My iPhone software to locate her cell phone.

Department Exhibit (DX) 1 was the second page of the domestic incident report (DIR), known as the supporting deposition. It read,

On numer[ous] occasions Jonathan Joyner abused me physically first time was in front a club called 809 . . . after that night he often abused me. Recently Jonathan Joyner abused me [i]nside of his car by hitting me on the [f]ace and body. He also used his elbow and hit me on my head which left me unc[on]s[c]ious and when I woke up he was wiping my face because it had blood on it.

Because there were visible injuries, Clancy asked Person A if she would “mind being photographed.” The complainant “did not object,” but did not want any photographs of her face because she did not want Respondent to be in trouble with his job. When Clancy reminded Person A that it would substantiate her case, Person A told Clancy that Respondent was a police officer.

Clancy had spoken to Person A for perhaps 45 minutes before she mentioned Respondent’s occupation. Clancy informed her supervisor and the necessary notifications were made.

Clancy indicated that Person A was interviewed by a sergeant from the Patrol Borough Brooklyn South Investigations Unit. The interview was placed into evidence (see DX 2 & 2a, recording & transcript of interview) and is summarized below:

Interview of Person A

Person A’s date of birth was [REDACTED]. She stated that she was in a relationship with Respondent. They had a [REDACTED] together and she was pregnant with another.

Person A and Respondent had been “going through problems on and off.” In 2010, Person A said, she and Respondent were at a nightclub in Manhattan called 809 with some of his friends. She was not “in the mood for the nonsense of the club.” Respondent indicated that he was going

to stop in briefly and asked if she wanted to come in. She declined, and he “left me in the car for some hours.” When he returned, she argued with him over this. Out of either aggravation or drunkenness, he struck her in front of the club, “which was reported in front of the club also.” She suffered broken fingernails and “regular little scratches” on her hands from where he tried to drag her out.

Respondent’s friends had to pull him back as he was beating her and trying to “push” her out of the car. Someone yelled out to one of them that Respondent was striking Person A. The friend rescued her, telling Respondent, “[H]ow are you just going to throw her out in the street what wrong with you?” When asked if this individual and Respondent’s other friends from the incident also were police officers, Person A answered, “No. They were just, well, [n]o, not really, they were just friends.”

“[S]ome time ago” but in 2011, Person A added, Respondent “pushed me to the wall.” A Department investigator came to her house investigating a claim of abuse that had been reported by someone else. The investigator wanted to see if she had visible injuries. She did have some bruises on her arms. Respondent was “kind of rough” during this 2011 incident at her home “because he pushed me to the wall.”

On Wednesday, November 2, 2011, Person A said, she and Respondent were in his rental vehicle in the vicinity of Brighton Beach. It was a 2012 white Dodge Charger. Respondent and Person A got something to eat and “were coming back home.” They were arguing in front of her home. Respondent kept driving and they kept arguing. When she got a phone call from a friend (whom she alternately described as male and female), Respondent claimed, “[W]hy are you disrespecting me like this?” She did not feel that she was doing so, but he hit her nonetheless, on the face, “like bam like that.” He knew that she was pregnant at the time.

Respondent kept driving, and there were people walking by. Person A indicated to him that she was getting out of the car. Respondent said, “[Y]ou are not getting [out] the car,” and struck her again. Person A crouched down by “that little thing on the side of the car, where you put the little stuff in .” She agreed with the investigator’s suggestion that it was, “In the middle between you and the console” (and a second investigator noted later, “It’s not a console”). Respondent grabbed Person A by the hair and started banging her head. Her lip burst open and she began to feel dizzy. She put her head back down and he banged it approximately three times, causing her to lose consciousness. As she was losing consciousness, he hit her on the head with his elbow.

When Person A regained consciousness, Respondent had moved the car and was wiping blood off her face “because there was blood all over the” area where the cup holders were located. The blood was from her lip. Her nose also was scratched, but Person A indicated that this might have been caused by her nose ring. Respondent asked her if she was okay, but he then made her get out of the car. She did not get home until 0100 hours.

Person A’s lip was swollen and she “wouldn’t work for like 3 days or like 2 days with a really, really big lip.” She also had small marks on her stomach from where he slapped her. She was in a lot of pain for two to three days but it was not swollen.

Person A went to “my doctor because I thought first, I didn’t . . . really like notice the cuts, I thought I was just coughing, next I was coughing blood. I thought it was because of the pregnancy. Maybe something was wrong.” The doctor asked, “[W]hy do you have a fat lip? Why do you have bruises? What is going on?” Person A demurred, saying she just wanted to know if the baby was all right. The doctor “was speaking to me after everything” and told her, after she inquired, that it was too late in the pregnancy to obtain an abortion.

When Person A was asked if she ever lived with Respondent, she said, "Not really I can't really say yes or no but he was by me every other day like staying over late and stuff like that."

Person A noted that several people, women especially, had been calling her and telling her to "stop . . . that's not his kid and that's not who he wants." In Person A's opinion, Respondent was treating her this way because of the pregnancy, noting that "every time I happen to get pregnant," which always involved Respondent as the father, he acted the same way. He refused to pay child support and acknowledge paternity on the birth certificate. To others he denied that the born child was his issue, but to his family he said, "[I]f it wasn't my kid why would I still be with you?"

After the interview was placed into evidence, cross examination occurred. On cross examination, Clancy admitted that there were no photographs of Person A's head, where she said Respondent hit her with his elbow. Clancy noted that Person A said she had pain to her head, but one could not photograph pain.

Clancy agreed that there were no other witnesses to the incident and no 911 calls were made.

Respondent

Respondent had been a member of the Department for eight and a half years. He was married to [REDACTED] and had four children. In 2011, he lived in [REDACTED].

Respondent identified Person A as [REDACTED]. Their relationship began in 2009 or 2010. They had one child together, a nine-month old, and there was another, a four-year-old, where paternity was in question.

Respondent broke up with Person A in October 2011 over the phone. There were "a few issues" and he wanted to work things out with his [REDACTED]. His [REDACTED] was aware of the relationship with Person A.

Respondent asserted that Person A took the breakup "pretty hard" and was very angry about it. She threatened him, saying, "How does thirty (30) days on suspension with no pay sound?" He had spoken with her before about being a police officer, what the job entailed and what could happen if one got in trouble.

On Wednesday, November 2, 2011, Respondent was assigned to the 75 Precinct but was working a detail in MetroTech Center. He worked a 0700x1540 tour. His [REDACTED] and [REDACTED] picked him up from work and they went home to [REDACTED]. He was there the whole night. He denied having a verbal or physical altercation with Person A on that date or having a confrontation in a vehicle. He had never struck Person A.

The first time Respondent found out that Person A made an allegation against him was on November 7, 2011. He indicated that he was off duty at the time. A lieutenant spoke to him by phone and told him "someone was making allegations against me and I had to come in." He went to the 60 Precinct station house with his [REDACTED] and spoke to a union delegate. He was arrested but the charges were dismissed.

After the charges were dismissed, Person A apologized to Respondent for making up the story. Those were her words.

Respondent testified that because he and Person A had a [REDACTED] in common, "I have to be cordial" with her. He visited his [REDACTED] and provided Person A with financial support. Since late 2011, Person A never had prevented Respondent from seeing the [REDACTED]. She had never called the police when he arrived at her home to see the [REDACTED], and she let him be with the [REDACTED] unsupervised.

On cross-examination, Respondent testified that it was a daily routine for his [REDACTED] to drop him off and pick him up at work. On the night of November 2, 2011, he did "normal activities" until bed, like watching television and eating dinner. He did not remember "what show" he watched or what time he went to bed.

Respondent asserted that he was not surprised when Person A told him that she had fabricated the allegation against him because she "lies a lot" about "anything."

Respondent agreed that Person A completed the DIR "under penalty of perjury." Yet when Respondent learned that Person A had fabricated the allegation, he did not report it to authorities.

On re-direct examination, Respondent stated that he explained Person A's lying, and the fact that he was in [REDACTED] at the time, to his attorney. The attorney filed a Notice of Alibi in the criminal case (see Respondent's Exhibit A), indicating that he was at his [REDACTED] address on November 2, 2011.

On re-cross examination, Respondent testified that if he had reported Person A's false statement to the authorities, he would be placed on modified duty anyway. Other officers told him that this was the case "when a Police Officer goes and tries to make a report against – especially a guy my size, go in and make a report against her."

Upon examination by the Court, Respondent said that he was driving a rental car in the fall of 2011. He had the rental for some time and was in the process of "acquiring" a new vehicle.

Respondent's financial support to Person A was not court-mandated. He gave whenever she asked. He had not contested the paternity of the four year-old child in court. On continued re-direct examination, Respondent indicated that he informed the investigator, during his official Department interview, that Person A had fabricated the charges.

FINDINGS AND ANALYSIS

Respondent is charged with becoming "involved in a physical altercation with Person A." Person A was pregnant with Respondent's [REDACTED]. She asserted that she was driving with him on the evening of Wednesday, November 2, 2011, when they began arguing. She received a telephone call from a friend, who might have been male, and Respondent felt that Person A was "disrespecting" him. He hit her in the face, grabbed her hair and banged her head into the side or center console. Her lip burst open and she lost consciousness. There was blood all over. There also were marks on her stomach from where he slapped her. Person A did not, until 45 minutes into the initial processing of her complaint at the 60 Precinct, even mention that Respondent was a police officer.

Respondent denied that the incident happened at all. He agreed that Person A had been his [REDACTED]. In fact, he admitted that, although he had been [REDACTED] for several years and had [REDACTED] with his [REDACTED], he was seeing Person A during that time. He was the [REDACTED] of the in utero [REDACTED] and possibly of an older child of Person A as well. He asserted that in October 2011, he was trying to break up with Person A and she was unhappy about it. He claimed that she threatened to get him in trouble with his job. He asserted that after his criminal case was dismissed, she apologized to him. They now had a cordial relationship and she allowed him around their [REDACTED].

Person A went to the 60 Precinct station house four to five days later and made a complaint. The domestic violence officer, Clancy, took the complaint. Clancy testified that she observed a laceration to Person A's lower lip and bruising on her stomach. Person A informed Clancy that Respondent was a member of the Department and Person A was interviewed by Patrol Borough Brooklyn South Investigations Unit personnel. She did not appear at trial. Instead, the recording and transcript (see DX 2 & 2a) were admitted as evidence.

Other than Clancy's observations, the Department's case relies on hearsay. Although hearsay is admissible in this forum, see Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991), there are significant reasons for caution in cases like this that present close questions of credibility. The hearsay is central to the Department's case, so there is a question of basic fairness in using the hearsay to reach a finding of fact. See Case No. 77005/01, p. 6 (May 27, 2002) (hearsay declarations are insufficient to support findings of guilt in cases that pose close questions of credibility).

Person A was contacted by the Department in reference to this case but did not appear for trial. In light of her failure to testify, the Court cannot observe her demeanor, explore possible motives to lie, or assess the credibility of her account after the test of cross examination. Further, it is evident that Person A made a decision early on not to cooperate with any prosecution of Respondent. He was charged criminally in November 2011, but by February 2012, the prosecution moved to dismiss the case for lack of victim cooperation. After a brief, unrecorded follow-up interview with Department investigators, Person A had no apparent contact with the Department. It is unclear when this follow-up happened.

During the interview, Person A was forthright and direct but did not sound frightened. If anything, she sounded angry. It is notable that Person A apparently never was asked why she chose to make a complaint five days later. It thus was unclear what about that particular moment in time led her to walk into the 60 Precinct station house. Cf. Case No. 2010-3105, p. 15 (Jan. 14, 2013) ("[The witness] simply was not asked about it. There may well be a very good explanation, but the Court is left to speculate because there is nothing in the record to explain it").

Person A herself suggested a motive for reporting in her interview. She stated that Respondent was denying paternity falsely (at trial, he admitted that he was the [REDACTED] of the now

██████████. This correlates with Respondent's contention at trial that Person A was upset about him wanting to break up with her. Because Person A did not appear at trial, Respondent's counsel could not explore whether anger over the relationship was a motive to give false testimony against Respondent. Nor could the Department seek to diminish the impact of this apparent displeasure with Respondent.

The value of the interview was decreased by other unasked questions. The investigators did not ask how or specifically where Respondent hit Person A. For example, she said "he was like bam like that," but the investigators did not ask for descriptive details.

Person A nevertheless recounted a pretty violent attack by Respondent, stating that he beat her into unconsciousness and she was coughing up blood. Yet she did not seek immediate medical attention. She was pregnant, and while she told investigators that she was seeking an abortion, she was worried enough about the baby's wellbeing to visit her doctor. It is unclear whether it was a scheduled visit but it appears to have been with her obstetrician/gynecologist (OB/GYN). It is evident from Person A's description of the doctor's questions that he suspected domestic violence as the reason for her injuries. Yet she denied the matter to him. The bottom line is that Person A did not seek immediate medical attention for what supposedly was a violent attack.

Person A's claims are uncorroborated by any other evidence besides Clancy's observations. Those observations, however, are of limited worth under the circumstances. Person A did not want her face photographed, so a photograph was not taken. While Clancy took a photograph of Person A's stomach, it was uploaded to a Departmental database but not printed out. When the criminal case was dismissed and sealed, the photograph was as well. The Department did not seek to unseal the matter. Cf. Matter of Grossman v. Kralik 217 A.D.2d 625, 626 (2d Dept.

1995) (written memorandum of non-testifying judge who saw courtroom attendant sleeping was corroborated by other testimony at hearing).

Person A said that there were people walking by after she was struck. She did not seek the assistance of any of these individuals and no 911 calls were made.

Moreover, the injuries were not described with any degree of detail, either by Clancy at trial or by the investigators during the interview. Was there bleeding? Did it appear to be recent? How long or wide were the injuries? How deep did they appear to be? Was the lip puffy? Were the injuries consistent with anything other than being struck, like falling? None of these questions was asked. There is thus no evidence of the severity of either wound, and no connection of the injuries to her claims.

There were several other unexplored areas of potential evidence. Person A told Clancy that Respondent was texting her while she was at the station house, wanting to know where she was or whom she was with. But the phone records were not sought. The investigators realized the import of the blood in Respondent's rental car and obtained some details about the vehicle from Person A. The Advocate represented, however, that no one actually sought to search this vehicle.

Person A had a doctor visit after the incident and before making the police complaint, as noted, with her OB/GYN. Because Person A failed to cooperate with the Advocate, the Department could not seek a privacy release from her to obtain any relevant medical records from that visit. The investigators said they would obtain more information from Person A about the doctor after the interview, but it is unclear whether that happened. In any event, the Department did not seek a subpoena for the records.

As a party to the action, Respondent was an interested witness. See People v. Agosto, 73 N.Y.2d 963, 967 (1989) (criminal defendant is interested witness as a matter of law); Coleman v. New York City Transit Auth., 37 N.Y.2d 137, 142 (1975) (an actor in the transaction at bar in

civil case, having motive to shield self from blame, is interested witness, even if not a party). The Court does not necessarily find Respondent to be the most credible witness. Some of his testimony, like his claim that Person A threatened him with the specific penalty of 30 days of suspension without pay, was somewhat suspicious. Moreover, it is not disputed that Person A was injured in some way, as Clancy testified to observing the injuries. But there are greater problems with crediting Person A's hearsay account of how the injuries occurred. The Court concludes that the Department failed to prove with sufficient and reliable evidence that Respondent engaged in a physical altercation with Person A. Accordingly, the Court finds Respondent Not Guilty of Specification No. 1.

Specification No. 2

The second specification charges that Respondent, "having been involved in an un[u]sual police occurrence did fail and neglect to remain at the scene and request the response of a patrol supervisor." The Court has found, with regard to Specification No. 1, that the Department failed to prove that Respondent struck his [REDACTED] Person A. In fact, the Department did not establish that they were even together at whatever time and place the Department believes the incident occurred. Therefore, no unusual police occurrence was proven and Respondent is found Not Guilty of Specification No. 2.

APPROVED
MAR 29 2013
[Signature]
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

[Signature]
David S. Weisel
Assistant Deputy Commissioner Trials